

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

MALIK MASON,)
)
Petitioner,)
)
v.) Case No. CIV-22-800-J
)
THE STATE OF OKLAHOMA,)
)
Respondent.)

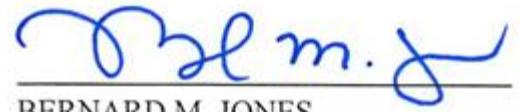
ORDER

Petitioner, a state prisoner appearing pro se, filed a Petition seeking habeas relief from a state court conviction pursuant to 28 U.S.C. § 2254 [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Shon T. Erwin consistent with 28 U.S.C. § 636(b)(1)(B), (C). Judge Erwin issued a Report and Recommendation finding the Petition contained both exhausted and unexhausted claims and recommending that Petitioner take one of the following actions: (1) file an amended petition raising only his Due Process claim; or (2) upon dismissal of the Petition without prejudice, attempt to exhaust state court remedies as to the remaining ineffective assistance of counsel claims [Doc. No. 9]. Petitioner thereafter filed an Amended Petition [Doc. No. 10]. Although Petitioner voices frustrations regarding his attorney's assistance, the Court construes the Amended Petition as raising only Petitioner's Due Process claim.

Having carefully reviewed the Petition, Amended Petition, record, and Report and Recommendation, the Court agrees with Judge Erwin's analysis. Accordingly, the Court ADOPTS the Report and Recommendation. However, because the Amended Petition satisfies Judge Erwin's

recommendation that Petitioner file an amended petition asserting only his Due Process claim, the Court RE-REFERRS the matter for further consideration.¹

IT IS SO ORDERED this 7th day of December, 2022.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

¹ The Court reaches no decision regarding Petitioner's attempt to exhaust state court remedies as to his Due Process claim.